

LOUISIANA STATE NOTARY EXAM

DIGEST OF 2007 LEGISLATIVE CHANGES TO EXAM ITEM SOURCES

Notice: This digest is published as an interim aid for instructors of courses of study in notary law and practice, and prospective notaries preparing for the examination. This digest does not constitute a part of the Louisiana Notary Public Examination Official Study Guide.

The following Acts of the 2007 Regular Session of the Louisiana Legislature changed the laws from which questions on the state notary public examination are devised. The changes are expected to be reflected in the 2008 edition of the *Louisiana Notary Public Examination Official Study Guide*.

Act 212: Notaries in Orleans parish

Repeals provisions requiring custodian of notarial records to maintain list of notaries public in Orleans Parish and repeals penalties.

Legislative Résumé Digest:

Prior law provided that the custodian of notarial records in Orleans Parish keep an accurate alphabetical list of all notaries public in the parish, showing their business and residence addresses and the expiration date of their bonds; that the list be kept open to public inspection during his office hours, and that he furnish the secretary of state and the district attorney of Orleans Parish, annually, a certified list of all notaries in the parish, showing the number of notaries and the number and names of those who have ceased to be notaries, and the number and names of those whose bonds have expired. He is required to keep the list accurate and up to date at all times, and notify the governor and the secretary of state of each vacancy caused by death, resignation, removal from Orleans Parish, or any other cause, as soon as such facts are ascertained by him.

Further provided that each notary shall, annually, before September 1st, furnish to the custodian a statement showing his office and residence address, the date of his bond and the surety or sureties thereon, and their addresses, and failure to furnish such statement constitutes cause for the revocation of the notary's commission.

Prior law further provided that each notary shall pay an annual fee of \$20, on or before September first of each year, to the custodian.

Prior law provided that the custodian institute proceedings by rule in the Civil District Court in Orleans Parish at least once every 12 months, and more often if he deems it proper and necessary on all non-attorney notaries in the parish to test the surety on their official bonds, and should the sureties on the official bonds so tested be judicially declared not good and solvent as required by law, the non-attorney notary whose surety has been so declared shall pay the costs of the rule, and shall be allowed thirty days within which to give a new bond, upon the payment of all costs which have been assessed against him in the proceeding.

Further provides for proceedings against absent notaries and for revocation of non-attorney notary's commission for failure to furnish proper surety bond.

Prior law further provided that it is the duty of the custodian to notify each non-attorney notary of the expiration date of his bond and provides the procedure for revoking the notary's commission if he fails or refuses to pay the annual fee fixed by law, or fails or refuses to furnish the information required, or fails to provide the proper bond as required by law.

Further provided that it is a misdemeanor for any non-attorney notary knowingly to act as such after the expiration of his bond, or after the surety on his bond has been canceled as provided by law. Provided a fine of not less than \$500 nor more than \$1,000, or imprisonment for not less than ten days nor more than six months.

New law repeals prior law.

Effective upon signature of the governor (July 2, 2007).

(Repeals R.S. 35:325-328 and 330-335 and R.S. 44:182.2-182.10)

Act 371: Inheritance tax phase-out

Repeals state inheritance tax; affects existing revenue department procedures in connection with small succession filings.

Excerpted from Legislative Résumé Digest:

Prior law repealed the tax on inheritances for deaths occurring after 6/30/04 unless a judgment of possession is not rendered or the succession is not judicially opened before the last day of the ninth month following the death of the decedent. *New law* deletes this provision and allows a refund for tax paid on deaths occurring after 6/30/04 if a claim is made between 1/1/08 and 12/31/09.

Amends R.S. 47:2401(B) & CCP 2953(C)(1)

Refer to Louisiana Department of Revenue Information Bulletin 07-018

Act 337 Mortgage cancellation

Provides relative to the cancellation of mortgages and vendor's privileges

Legislative Résumé Digest:

Prior law authorized the clerk of court to cancel a mortgage upon receipt of an affidavit from the notary public when the promissory note secured by a mortgage on immovable property had been lost or destroyed after receipt by the notary public who satisfied the promissory note out of the proceeds of an act of sale or mortgage executed before him.

New law requires the recorder of mortgages to cancel a mortgage or vendor's privilege upon receipt of an affidavit from a notary public or title insurer when the paraphed promissory note secured by a mortgage or vendor's privilege on immovable property has been lost or destroyed.

Existing law requires the affidavit of cancellation to set forth: (1) a description of the promissory note and the property; (2) that the affiant did satisfy the promissory note; (3) that the affiant did receive the note marked "Paid in Full" from the last holder of the note; (4) that the note was lost or destroyed while in the affiant's custody; and (5) that the affiant agrees to hold harmless the clerk of court or recorder of mortgages for any loss or damage occasioned by his failure to produce the note.

Prior law provides that the affidavit shall also include a statement that the affiant had made a due and diligent search for the last holder, the last holder could not be located, and one year had elapsed since recordation of the act of sale or mortgage which gave rise to the affidavit of cancellation, or it was required to be accompanied by an affidavit from the last holder stating that the promissory note marked "Paid in Full" was delivered to the notary public.

New law provides the statement will be that the affiant has made a due and diligent search for the note, the note cannot be located, and 60 days have elapsed since payment or satisfaction of the note.

New law (R.S. 9:5167(B)) retains *existing law* but also authorizes a person under the direction of the notary public or an officer of a licensed title insurer to submit an affidavit of cancellation which sets forth certain facts, including a description of the property.

New law provides that no mandamus proceeding is required to use the cancellation provisions of *new law*.

New law provides that the affiant who has signed an affidavit that is provided to the recorder of mortgages pursuant to *new law* that contains materially false or incorrect statements that cause the recorder to incorrectly cancel the recordation of a mortgage or privilege is liable to and shall indemnify the recorder and any person relying upon the cancellation for any damages that they may suffer as a consequence of such reliance.

Existing law provides that the clerk of court or recorder of mortgages shall not be liable for any damages resulting to any person or entity as a consequence of canceling a mortgage pursuant to an affidavit which complies with *existing law*.

New law extends the *existing law* exemption from liability to damages resulting from the cancellation of a mortgage or vendor's privilege pursuant to the provisions of *new law*.

New law provides that the request for cancellation shall have attached to it an act executed before a notary public or duly acknowledged before a notary public with or without witnesses or any act that is otherwise self-proving under the provisions of C.E. Art. 902(1), (2), (3), or (8).

New law provides a cancellation form which shall be accepted by the recorder of mortgages for each and every parish.

Existing law provides that a person requesting the recorder to cancel recordation of a mortgage or privilege and who provides the recorder with an act or declaration that contains materially false or incorrect statements that cause the recorder to incorrectly cancel the recordation of a mortgage or privilege is personally liable to and shall indemnify the recorder and any person relying upon the cancellation for any damages that they may suffer as a consequence of such reliance, and that a person who knowingly provides the materially false or incorrect statement is also guilty of false swearing under the provisions of R.S. 14:125.

New law extends *existing law* to any person who knew or should have known that the act or declaration he provided to the recorder contained materially false or incorrect statements and provides that any person who knowingly executes the materially false or incorrect statement is also guilty of false swearing under the provisions of R.S. 14:125.

Effective August 15, 2007.

(Amends R.S. 9:5167 and R.S. 44:106(A), 109(A), and 110; Adds R.S. 44:109.1)

Act 157: Reciprocal parishes

Adds the parishes of Natchitoches, Winn, Red River, and Bienville to the reciprocal notarial authority for notaries public in the parishes of Sabine and Vernon.

Legislative Résumé Digest:

Prior law provided for reciprocal notarial authority in the parishes of Sabine and Vernon.

New law provides for reciprocal notarial authority in the parishes of Natchitoches, Sabine, Red River, Bienville, Vernon, and Winn.

Effective August 15, 2007.

(Amends R.S. 35:191(S))